

SHELL OIL COMPANY

IBLA 77-151

Decided May 19, 1977

Appeal from decision of the Oregon State Office, Bureau of Land Management, rejecting, in part, noncompetitive acquired lands oil and gas lease offer OR 13781 (Wash.).

Set aside in part and remanded.

1. Mineral Leasing Act for Acquired Lands: Consent of Agency! ! Oil and Gas Leases: Acquired Lands Leases

The Bureau of Reclamation is not an "agency" within the ambit of that term in the Acquired Lands Mineral Leasing Act, 30 U.S.C. §§ 351-59 (1970). Where acquired lands are under the jurisdiction of a Bureau of the Department of the Interior, it is the Secretary's consent which is necessary to the leasing of land, and while the Bureau's views will be given careful consideration, where such views are merely conclusionary, it is proper to remand the case to ascertain the factual basis for such conclusions and to determine whether leasing may be permissible if coupled with appropriate stipulations.

APPEARANCES: Randolph D. Hurt, Esq., Shell Oil Company, Houston, Texas.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Shell Oil Company has appealed from that part of the Oregon State Office, Bureau of Land Management (BLM), decision dated January 14, 1977, which rejected noncompetitive acquired lands oil and gas lease offer OR 13781 (Wash.) for certain lands in Grant County, Washington. Appellant's lease offer was filed pursuant to the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. §§ 351-59 (1970). BLM held that such lands were within the Columbia Basin Reclamation Project and that:

As to most of this land, however, the Bureau of Reclamation has determined that oil and gas leasing and development would not be compatible with the purpose of the irrigation project. Therefore, in accordance with regulations 43 CFR 3109.3-1, your offer is rejected as to the following land in the Project, for the reason that the Bureau of Reclamation does not consent to oil and gas leasing: * * *

The offer was also rejected as to certain other lands because the records did not show that such land had been reacquired by the United States. The appeal was not directed to that part of the decision, therefore, the rejection of the offer as to those lands is final.

The regulation under which BLM operated in rejecting the lands under the administration of the Bureau of Reclamation (BuRec) was 43 CFR 3109.3-1. Such regulation reads:

Leases or permits may be issued only with the consent of the head or other appropriate official of the executive department, independent establishment or instrumentality having jurisdiction over the lands containing the deposits, or holding a mortgage or deed of trust secured by such lands, and subject to such conditions as that official may prescribe to insure adequate utilization of the lands for the primary purpose for which they were acquired or are being administered.

[1] It is clear that such regulation precludes mineral leasing on acquired lands, as contrasted with public domain, without the consent of the administrative agency having jurisdiction over the acquired land, and causes any lease which does issue to be subject to any stipulations which said agency may impose. Walter W. Sapp, 29 IBLA 319 (1977); Sallie B. Sanford, 24 IBLA 31 (1976). The Department has no authority to waive either the consent requirement or the execution of stipulations required by the administrative agency. Id.

This Department has held, however, that BuRec is not an agency whose consent is necessary to the issuance of an oil and gas lease under the Mineral Leasing Act for Acquired Lands. Walter W. Sapp, supra; Duncan Miller, A-28104 (December 1, 1959). The Assistant Secretary of the Interior stated in Miller:

Although the objections of a bureau within the Department, which is administering the lands, are to be given careful consideration and accorded their full weight in determining whether issuance of an acquired lands lease is in the public interest, such objections do not prohibit issuance of a lease if the objections are not persuasive and if it is determined that a lease should be issued despite the objections. In the case of acquired lands under the jurisdiction of bureaus of this Department, the Secretary of the Interior is the one whose consent is necessary under section 3 to the leasing of the land. His authority in that respect coalesces with his authority under the Acquired Lands Act to lease acquired lands in his discretion.

It appears from the record that the part of the offer relating to lands administered by BuRec was rejected solely because "the Bureau of Reclamation does not consent to oil and gas leasing."

In a title report request received by BLM on June 14, 1976, the Project Manager, BuRec, stated that "the subject lands will interfere with Project purposes." It is difficult to give weight to a conclusionary recommendation absent the supporting background material. Walter W. Sapp, supra; see Carolyn S. Edwards, 14 IBLA 141 (1974). As appellant has pointed out, the present record is devoid of any material upon which to base such a conclusion. See Walter W. Sapp, supra; Fred P. Blume, 28 IBLA 58 (1976). Therefore, this case will be remanded to BLM to reconsider the offer as to the BuRec lands. BLM should endeavor to elicit the basis for BuRec's objection to leasing of the lands in question. However, contrary to BLM's prior position, the mere objection by BuRec does not foreclose BLM from issuing a lease following BLM's independent evaluation of the evidence. In addition, BLM should ascertain whether leasing might be undertaken with stipulations to provide adequate protection for the irrigation project. Appellant, of course, may submit its proposals for protective stipulations to appropriate BuRec and BLM officials. These should be considered before final action is taken in this matter.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, that

part of the decision appealed from relating to BuRec lands is set aside and the case is remanded for action consistent herewith.

Frederick Fishman
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Douglas E. Henriques
Administrative Judge

